IN THE HIGH COURT OF HIMACHAL PRADESH,
SHIMLA.

Civil Revision No. 315 of 2001.

Date of Decision: 13th September, 2007.

Rakesh Kumar ……. **Petitioner.**

versus

Dhrub Kumar and ors. ……..**Respondents.**

Coram

The Hon'ble Mr. Justice Dev Darshan Sud,Judge.

Whether approved for reporting?[1]

For the Petitioner: Mr. B.K. Sood, Advocate.

For the Respondents: Mr. Ajay Kumar,Advocate.

Dev Darshan Sud, Judge.

This is the tenant's revision against the judgment of the learned Appellate Authority reversing the judgment of the learned Rent Controller ordering restoration of the essential amenities to the respondents. The tenant- petitioner approached the Rent Controller under Section 11 (3) of the Himachal Pradesh Urban Rent Control Act, 1987 (hereinafter referred to as the Act) on the allegations that the petitioner is a tenant in the premises which are used for non-residential premises where he is running the business of repairs of electronics items etc. It was

[1] Whether Reporters of Local Papers may be allowed to see the judgment?

alleged that the land lords were forcing the petitioner to vacate the shop for which purpose they resorted to removing the tin roof of the shop. The application was contested by the land lords on various grounds.

The learned Rent Controller held that the land lords have not removed the tin sheets of the roof of the premises but it was the petitioner himself who did so but not with the intention to lay a lintel as alleged by the landlords. Learned Rent Controller noticed that respondents did not restore the amenities of tin roof nor they were allowing the tenant to fix the roof himself. A direction was issued to the land lords to hand over the tin sheets for the roof for covering the premises which would be done by tenant. Learned Appellate Authority has reversed this judgment The tenant is now in revision.

From a reading of the judgment, I do not find that Appellate Authority is correct in holding that the shop should be without any protection without a roof. Having found as a fact that the tenanted premises were without a roof, the natural course would have been to direct the land lords or the tenant to refix the roof. I am not persuaded to hold that the land lords have removed the tin sheet(s). The bone of contention between the parties is as to whether the tenant wanted to build a fresh roof by constructing a lintel or not. The Appellate Authority has clearly misdirected itself on the question required for its determination. There is no evidence on record to suggest that the amenity which is very basic to any residential/commercial premises has not been withdrawn. Under these circumstances the judgment of the Appellate Authority is set aside. Permission is granted to the tenant to fix tin sheets on the roof of the shop occupied by him which is the subject matter of the present revision

petition. It is directed that the tenant will not attempt to make any fresh construction or to damage the structure or to lay the roof contrary to the municipal/Panchayat bye- laws or in a manner which is against law or would amount to making alterations which is illegal. This revision petition is accordingly disposed of. There shall be no order as to costs.

13th September, 2007. **(Dev Darshan Sud),**
(cm) **Judge.**